THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No. 1356 OF 2006

ORDER:

The petitioner filed the instant writ petition seeking a Writ of Mandamus declaring the action of the respondent in attempting to dispossess the petitioner from his land without there being any notice as illegal and arbitrary. A consequential direction is also sought directing the respondent not to interfere with the peaceful possession of the petitioner's property.

The petitioner is minor represented by his mother who filed affidavit on behalf of the petitioner, *inter alia*, alleging that the property admeasuring Ac.0.23 guntas in Sy.No.871, of Nanakramguda Mandal, was purchased by the petitioner's father, who later executed a Gift Deed in favour of the petitioner. Subsequently, it appears that the house bearing No.2-38/1/A/1 was constructed. Two days prior to filing of the writ petition, the officials of HUDA visited the petitioner's property and attempted to demolish the house for laying express road from Gachibowli to Shamshabad. Hence, the present writ petition is filed.

This Court in **P.Lakshmana Rao v. Executive Officer** has repeatedly held, whenever private property is required for any public purpose, or for laying a road, as a first step, the public authority must approach the owner to negotiate for parting with the land for laying of the road. If such person is not willing to give consent, the only method of acquiring the land is by resorting to the Land Acquisition Act, 1894. In case, a person is in possession of the Government land, even then, public authority cannot resort to highhanded action. I n **P. Lakshmana Rao's case** (supra), a Division Bench of this Court issued directions to be followed by Municipal authorities, Panchayat authorities and Revenue authorities for acquiring the land for public purpose. Having regard to the decision of the Division Bench, I have considered similar issue in a number of writ petitions and culled out various principles of law to be followed by the Government while acquiring/utilizing the private land for road widening. The principles were reiterated by my learned brother, Sri Justice B.Sudershan Reddy in **M.Madhavi Latha v. Rajendranagar Municipality**. The principles laid down by the Division Bench are as follows.

(1). Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

(2). If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections, if any, from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the

extent of encroachment or unauthorised occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

(3). In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

(4). If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

(5). In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R&B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

(6). If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status quo obtaining as on today regarding the structures.

In this case, the petitioner has enclosed the Gift Deed executed by his father and also the Gift Deed executed by his father's brother, in his favour. This would, *prima facie,* show that petitioner is the owner of the property admeasuring Ac.1.03 guntas. Therefore, any highhanded action by the respondent will be illegal. Unless and until due process of law mentioned hereinabove is followed, the respondent can neither demolish the petitioner's premises nor forcibly dispossess the petitioner.

The writ petition, with the above observations, is accordingly disposed of.

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(V.V.S. RAO, J)

27-01-2006

N.B. Furnish copy by 30-01-2006

B/o

MRR